



FMLA

MASSACHUSETTS

Federal vs. Massachusetts Family and Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
Employers Covered	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, Massachusetts has leave laws regarding (1) maternity leave (contained in the Maternity Leave Act) and (2) parental and family medical leave (contained in the Small Necessities Leave Act).</p> <p>Maternity leave: Employers with six or more employees.</p> <p>Parental/family medical leave: Same as the federal FMLA</p>
Employees Eligible	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p>Maternity leave: Female employees who have completed the initial probationary period (not to exceed six months) or, if there is no probationary period, have been employed full-time by the same employer for at least three consecutive months.</p> <p>Parental/family medical leave: Same as the federal FMLA</p>
Leave Amount	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p>Maternity leave: Up to eight weeks for the birth or adoption of a child.</p> <p>Parental/family medical leave: A total of 24 hours during any 12-month period, in addition to leave available under the federal FMLA.</p>
Type of Leave	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> • Birth of employee's newborn child; • Placement of child with employee for adoption or 	<p>Maternity leave: Leave for the birth of a child or adoption of a child under the age of 18 (or under age 23 if the child is mentally or physically disabled). Leave may be paid or unpaid, at the employer's discretion.</p>

	<p>foster care;</p> <ul style="list-style-type: none"> • Providing care for employee's parent, child or spouse with serious health condition; • Employee's own serious health condition; • Any qualifying exigency when employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or • Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. 	<p>Parental/family medical leave: In addition to leave available under the federal FMLA, unpaid leave to:</p> <ul style="list-style-type: none"> • Participate in school activities directly related to the educational advancement of a son or daughter; • Accompany a son or daughter to routine medical or dental appointments; and • Accompany an elderly relative to routine medical, dental or other appointments for professional services related to the elder's care. <p>An "elderly relative" is an individual who is at least 60 years old and who is related to the employee by blood or marriage, including a parent.</p>
<p>Serious Health Condition/Serious Injury or Illness</p>	<p>Serious Health Condition:</p> <p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> • A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment; • A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective; • Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or • Any incapacity related to pregnancy or for prenatal care. <p>Serious Injury or Illness:</p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active</p>	<p>No specific provision</p>

	<p>duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself either before or after the member became a veteran (NOTE: According to the Department of Labor (DOL), the FMLA's military caregiver leave provisions for family members of veterans with serious injuries or illnesses will become effective when the DOL releases its final regulations; visit the DOL website for more information).</p>	
Health Care Provider	<p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.</p>	No specific provision
Intermittent Leave	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p>Maternity leave: No provision</p> <p>Parental/family medical leave: Leave may be taken intermittently or on a reduced leave schedule</p>

<p>Substitution of Paid Leave</p>	<p>Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.</p>	<p>Maternity leave: Leave cannot affect the employee's right to receive vacation time, sick leave, etc., for which she was eligible at the date of her leave.</p> <p>Parental/family medical leave: An employee may elect or an employer may require the employee to substitute any of his or her accrued paid vacation leave, personal leave or medical or sick leave.</p>
<p>Reinstatement Rights</p>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p>Maternity leave: Must be restored to her previous position or a similar position with the same status, pay, length of service credit and seniority as of the date of her leave (except where other similar employees are laid off during the maternity leave). Period of maternity leave is not required to be included in determining the employee's benefits, rights and advantages incident to employment.</p> <p>Parental/family medical leave: Same as the federal FMLA</p>
<p>Key Employee Exception to Reinstatement Rights</p>	<p>Limited exception for salaried employees if among highest paid 10% of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.</p>	<p>Maternity leave: No provision</p> <p>Parental/family medical leave: Same as the federal FMLA</p>
<p>Maintenance of Health Benefits During Leave</p>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p>Maternity leave: Leave cannot affect the employee's right to receive benefits, plans or programs, etc., for which she was eligible at the date of her leave; however, the employer is not required to pay the cost of any benefits, plans or programs during the period of leave, unless the employer pays the cost of these benefits, plans or programs for employees on non-maternity leaves of absence.</p> <p>Parental/family medical leave: Same as the federal FMLA</p>
<p>Leave Requests</p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p>Maternity leave: Employee must give at least two weeks' notice to her employer of her anticipated date of departure and intention to return.</p> <p>Parental/family medical leave: If leave is foreseeable, the employee must provide at least seven days' notice before beginning of leave. If not foreseeable, the employee must provide notice as soon as possible.</p>

<p>Certification Requirement</p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p>Maternity leave: No provision</p> <p>Parental/family medical leave: Employer may require that request for leave be supported by certification.</p>
<p>Executive, Administrative and Professional Employees</p>	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	<p>Maternity leave: No provision</p> <p>Parental/family medical leave: Same as the federal FMLA</p>
<p>Other</p>		<p>Registered domestic partners must be treated the same as spouses for most purposes under Massachusetts law, including for employee leave purposes.</p>
<p>Statutes</p>	<p>29 USC 2601</p>	<p>Massachusetts Statutes § 149-105D (maternity leave); § 149-52D (parental/family medical leave)</p>

Massachusetts Commission Against Discrimination

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www.mass.gov/mcad/index.html

Sources: The federal FMLA, Department of Labor Regulations under the federal FMLA and Massachusetts Statutes.

This Chart is provided to you for general informational purposes only. It broadly summarizes state and federal statutes, but does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions of state offices of commissioners of insurance) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.

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